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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,629	04/01/2004	Robert G. Turcott	A04P3001-US2	1046
24473	7590	03/16/2006	EXAMINER	
STEVEN M MITCHELL PACESETTER INC 701 EAST EVELYN AVENUE SUNNYVALE, CA 94086			MANUEL, GEORGE C	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/816,629

Applicant(s)

TURCOTT, ROBERT G.

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 28-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-18, 21-27 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/1/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-27, drawn to monitoring a patient's position, classified in class 607, subclass 19.
- II. Claims 28-54, drawn to monitoring a patient's autonomic tone, classified in class 607, subclass 18.
- III. Claims 55-79, drawn to monitoring a patient's body temperature, classified in class 607, subclass 21.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are directed to related patient monitoring. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, inventions I, II and III have a materially different mode of operation.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Steven M. Mitchell on 3/13/06 a provisional election was made without traverse to prosecute the invention of 1, claims 1-27.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 28-79 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claim 1, 2, 3, 4, 8, 9, 13, 14, 15, 16, 17, 21, 22 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sheldon '431.

Sheldon discloses monitoring a patient's body position using activity sensor 60.

The sensor senses superior-interior, lateral-medial, and anterior-posterior positions and correlates these positions with pacing intervals in step 206. Controller 40 correlates these position and pacing intervals with the hemodynamic response sensed by amplifiers 38. The pacing interval is periodically updated when the microprocessor interface circuit automatically re-calibrates an offset error and drift caused by temperature variation using the activity circuit 62 of FIG. 1.

Regarding claims 3 and 16, the activity circuit 62 is capable of updating at least one pacing interval, at least once per day based on a temperature variation of the patient between night and day.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon '431.

Regarding claims 5 and 18, one of ordinary skill in the art would have found it obvious to update a pacing interval for a body position based on the detected ventricular response because the digital controller/timer circuit 40 controls the pulse widths of the APE and VPE pacing pulses and the sensitivity settings of the sense amplifiers as a function of the activity circuit 62.

Claims 10-12 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon '431 in view of Alt '317.

Sheldon meets all or the claim limitations as discussed above except for determining whether significant motion is present and not measuring a hemodynamic response when significant motion is present.

Alt discloses an algorithm that prevents a patient's blood pressure from dropping when he stands up and provides a physiological fallback to the proper rate absent other activity by the patient.


One of ordinary skill in the art would have found it obvious to use the teaching of Alt as a means to control blood pressure for abrupt changes in motion for the Sheldon device by not measuring sensed cardiac contractions using sense amplifiers 38 when abrupt motion is sensed with activity sensor 60.

***Allowable Subject Matter***

Claims 6, 7, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

  
George Manuel  
Primary Examiner  
Art Unit: 3762

3/13/06